In the High Court of Uttaranchal at Nainital.

Criminal Revision No. 50/2004

Rampal @ Rajpal …Revisionist.

Vs.

State of Uttaranchal ...Respondent.

Hon'ble Irshad Hussain, J.

Supplementary affidavit is taken on record.

2- Heard Sri Ramji Srivastava learned counsel for the petitioner and Sri H.C.Pandey learned A.G.A. and perused the record.

3- This criminal revision has been preferred under section 397/401 of the Code of Criminal Procedure (for short 'Code') against the impugned order dated 10-2-2004 passed by the Sessions Judge, Dehradun in sessions trial no. 176/2002 State versus Rampal @ Rajpal, whereby the application of the defence to summon some witnesses as defence witnesses was rejected. The accused-petitioner wanted to examine the Chief Medical Officer, Dehradun and the Registrar of the Hindu Marriages, Dehradun to prove the medical examination report of the girl as well as her marriage certificate with the accused. With the supplementary affidavit copy of the statement of the girl Ms. Suman has been field. I have gone through the said statement and find that in the circumstance of the case consideration of the medical examination report of the girl as well as her alleged certificate of marriage were required to be proved by cogent evidence, if necessary.

4- As stated above the application to summon the relevant witnesses in defence was rejected. Before preferring an application to summon the witnesses the defence could have moved an application under section 294 of the 'Code' calling upon the prosecution to make an endorsement on these documents so that the genuineness of the documents may either be admitted or disputed. In case the

genuineness of the documents was to be admitted there will be no requirement to summon these witnesses in defence. The necessity to summon these witnesses will arise only if the genuineness of the documents is disputed by the prosecution. It is expected that the D.G.C. (Criminal) will prudently make endorsements on these documents considering the statement of the girl and only then the defence witnesses will be summoned by the prosecution.

5- In view of this the petition is to be disposed of accordingly.

6- The revision is disposed of with the direction that the petitioner-accused shall move an application under section 294 of the 'Code' before the Sessions Judge who shall direct the prosecution to make an endorsement on the documents mentioned above and thereafter shall reconsider the prayer of the defence to summon the witnesses namely the C.M.O. and the Registrar Hindu Marriages, Dehraun.

(Irshad Hussain, J.)

Date 9-4-2004

ISB